**District 2, Marine Engineers Beneficial Association—Associated Maritime Officers, AFL–CIO *and* Inland Lakes Management, Inc.** Case 7–CB–7715

November 15, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On December 3, 1990, Administrative Law Judge Russell M. King Jr. issued the attached decision in this proceeding. The General Counsel and the Charging Party filed exceptions and supporting briefs, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

We agree with the judge, for the reasons set forth by him, that the General Counsel did not establish that the Respondent's picketing sought reinstatement of the striking chief engineers, whom we have found to be 8(b)(1)(B) representatives[2] There was no evidence that the Respondent ever asked the Employer for reinstatement of the striking chief engineers. Indeed, as of the time of the hearing, the strike of all licensed engineers, including chief engineers, was still ongoing. Conceivably, there could come a time when the Respondent would end its strike and seek reinstatement of the chief engineers. And, conceivably, the reinstatement that the Union might seek could be *immediate* reinstatement, i.e., the displacement of the replacement chief engineers. However, the critical point is that all of this is mere speculation. As the judge aptly observed, the General Counsel and Charging Party are ''seeking to present, as fact, what they think the Union would seek'' in the future.

Our dissenting colleague seeks to make up for the deficiency by pointing to the language of the picket signs and to prior deposition testimony of two of the Respondent's representatives in other litigation between the Respondent and the Charging Party.

With respect to the picket signs, we note that the legend on the signs protested the hiring of replacements (referred to as ''scabs''). Obviously, in any strike situation, the union will vigorously oppose the employment of replacements, for such employment helps the employer to win the economic struggle by operating the business while the strikers are not earning wages. But, it is an unwarranted leap to infer from such a picket sign that the union is demanding that the strikers now displace the replacements. As discussed above, that demand may occur in this case, but it has not yet done so.

We find similarly unpersuasive our dissenting colleague's reliance on the prior deposition testimony of two representatives of the Respondent, Pelfrey and Nelson[3] In these depositions, taken on December 16, 1988, and June 23, 1989, respectively, Pelfrey and Nelson stated that they ''wanted'' to have the strikers returned to work.

This testimony was elicited pursuant to cross-examination designed to establish that the Respondent had a reinstatement objective. Significantly, the judge, after hearing all the evidence in the case, found that there was no reinstatement objective. We would not disturb the judge's findings and conclusions in this regard.

Further, we do not regard the testimony as an admission against interest. At most, the testimony is that the witness ''wanted'' to have the strikers returned to work. Obviously, it is the ''want'' of every union that strikers will one day return to work at the successful conclusion of a strike. However, as discussed above, the Respondent had not reached the point at which it

[1] The General Counsel and the Charging Party have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 9l NLRB 544 (l950), enfd. l88 F.2d 362 (3d Cir. l95l). We have carefully examined the record and find no basis for reversing the findings.

Pursuant to the Charging Party's request, we note that at one point in his decision, the judge mistakenly referred to the union which represents the Charging Party's unlicensed seamen as the ''Seamen's International Union,'' rather than its correct name, the ''Seafarer's International Union.'' The judge also mistakenly stated that the vessels operated by the Charging Party, which had previously been owned by National Gypsum Company, had been sold by National Gypsum to LaFarge Cement Company. These errors do not affect the judge's findings.

[2] Thus, this case is distinguishable from the Board's decision in *Marine Transport Lines*, 301 NLRB 526 (1991), in which the union had a reinstatement objective. Similarly distinguishable are the Board's decisions in *Masters, Mates & Pilots (Marine & Marketing)*, 197 NLRB 400 (1972), enfd. 486 F.2d 1271 (D.C. Cir. 1973), cert. denied 416 U.S. 956 (1974); *Masters, Mates & Pilots (Westchester Marine)*, 219 NLRB 26 (1975), enfd. 539 F.2d 554 (5th Cir. 1976); and *Masters, Mates & Pilots (Cove Tankers)*, 224 NLRB 1626 (1976), enfd. 575 F.2d 896 (D.C. Cir. 1978). In all of these cases, the unions' objectives included seeking reinstatement of 8(b)(1)(B) representatives, in addition to seeking other objectives, and in those circumstances the Board found that the unions' ''entire course of conduct'' violated Sec. 8(b)(1)(B). See also *Newport Tankers Corp. v. NLRB*, 575 F.2d 477 (4th Cir. 1978), cert. denied 439 U.S. 928 (1978), on remand 240 NLRB 1240 (1979).

[3] We find unwarranted our colleague's statement that the judge ''overlooked'' this deposition testimony. The judge specifically stated in his decision that ''*[a]ll* testimony and evidence, regardless of whether or not mentioned or alluded to herein, has been reviewed and weighed in light of the *entire* record.'' (Emphasis in original.) Although the judge did not accord this testimony the weight as would our dissenting colleague, there is no basis for concluding that he did not consider it in making his findings.

was seeking the reinstatement of the strikers. The strike was still ongoing. In these circumstances, we would not equate the Respondent's ''want'' with a present objective of seeking the reinstatement of the strikers and the displacement of the replacements.

In sum, we would affirm the judge's credibility resolution and his finding that the Respondent was not seeking to have the striking chief engineers displace the replacements.

## ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

CHAIRMAN STEPHENS, dissenting in part.

Although I agree with my colleagues and the judge that only the Charging Party Employer's chief engineers are grievance adjusters within the meaning of Section 8(b)(1)(B), I disagree with their conclusion that the Respondent Union's picketing and strike against the Employer did not violate the Act. Rather, I find that the evidence is sufficient to infer that a*t least one* of the Respondent's objectives was to return the striking chief engineers to their positions with the Employer at the conclusion of the strike and picketing, replacing any 8(b)(1)(B) representatives hired by the Employer to fill vacancies created by the strikers. With the establishment of this objective, it is clear that the Respondent's conduct violated Section 8(b)(1)(B) in light of the Board's decision in *Masters, Mates & Pilots (Marine Transport Lines)*, 301 NLRB 526 (1991).

On September 10, 1988, the Respondent initiated picketing at various ports where the Employer's ships engaged in business, asserting that it was on strike against the Employer. It is clear that the Respondent had, from the beginning, an objective of gaining recognition from, and bargaining with, the Employer. A number of the Respondent's members, including chief engineers, withdrew their services from the Employer, and replacements were hired. The Respondent's strike activity continued at least through the time of the unfair labor practice hearing, which concluded in September 1989.

With respect to the General Counsel's 8(b)(1)(B) allegations, the judge concluded, inter alia, that the Respondent's recognitional and bargaining objective was lawful in the circumstances of this case. He further concluded that the allegation that an additional objective of the strike and picketing was the reinstatement of striking chief engineers rested on no more than speculation concerning poststrike issues not yet addressed by the parties, and that there was ''no testimony or evidence in the case to establish what, if anything, the Union seeks beyond recognition and bargaining'' once the strike concluded.

In cases of alleged unlawful conduct of the kind involved here, a union's objectives may be inferred from an examination of the totality of its conduct and the relevant circumstances, including the statements of its representatives and agents and the language of its picket signs. See, e.g., *Marine Transport*, supra at 554 fn. 67. In my view, the judge overlooked highly significant evidence in this regard. Thus, some of the Respondent's picket signs read ''Scabs are Working Your Friend's Jobs,'' and:

> ATTENTION MASTERS AND LICENSED MATES: Most of the engineers working on Inland Lakes Vessels are *SCABS*. These SCABS are stealing jobs from your FRIENDS and FORMER SHIPMATES who elected to stand up for better working standards and conditions.

It is not a matter for serious dispute that these picket statements referred to the Employer's hiring of replacements and that the message implied a purpose to have union members who had vacated their jobs in support of the strike reinstated at the strike's conclusion.

Even more significant is the testimony of two representatives of the Respondent at the unfair labor practice hearing. Both witnesses were asked about sworn deposition testimony submitted in other, concurrent litigation between the Employer and the Respondent. On the matter of reinstatement of the strikers, the relevant testimony of Melvin Pelfrey, the Respondent's executive vice president, is as follows:

> Q. (By counsel for the General Counsel) And when you were asked about this on December 16, 1988, you said that you would like to have Mr. Sinnett [an 8(b)(1)(B) representative] returned to Inland Lakes Management employ; correct?
>
> A. Yes.
>
> Q. And that was your intention at that time?
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> A. Yes.
>
> . . . .
>
> Q. I take it there is [sic] other people, at least as of December 16, 1988, people that were on strike that you wanted to have returned to the employ of Inland Lakes Management?
>
> A. Again, I don't know.
>
> Q. As of December 16 you were asked: ''But isn't it a fact that you want to have persons like Mr. Sinnett and others returned to active employment with Inland Lakes management, is that correct? [And your answer was] Yes.'' That was your answer: right?
>
> A. Yes.

The Respondent's staff representative, Herbert Nelson, gave the following testimony concerning the same question of striker reinstatement:

> Q. (By Counsel for the Employer) Do you recall being asked if it was your objective to have

those people, currently on strike, replace those people now working?

A. No.

Q. You don't recall that?

A. No.

JUDGE KING: Mr. Kershner, is the year of that deposition 1989?

MR. KERSHNER: Yes, June 23, 1989.

JUDGE KING: Thank you.

BY MR. KERSHNER:

I direct your attention to Page 23 of the deposition and ask you the bottom several lines to read that, if you would?

(Witness complies)

On Friday when you gave this deposition did you intend to have the current strikers replace the employees that are currently employed?

MR. LACKEY: Objection. Once again, what he wants is not relevant to this—

JUDGE KING: Objection's overruled.

THE WITNESS: He wouldn't let me answer the question but that isn't my choice. That's the man that's on—

BY MR. KERSHNER:

Did you not say that, yes, you would?

A. Yes. But that is not my choice. Each man has his individual choice if he'd want to return.

Q. But you had said on Friday, did you not, that yes, you wanted to have the strikers replace the current employees; isn't that correct?

A. Yes.

The testimony of Pelfrey and Nelson contains admissions against interest that provide clear and persuasive evidence that one of the goals of the Respondent's picketing and strike was to force the Employer to rehire the Respondent's striking members[1] Just as clearly, this objective included the reinstatement of striking chief engineers as the Employer's 8(b)(1)(B) representatives.

The evidence supplied by the Respondent's admissions and its picket-sign language together are sufficient to establish that an objective of the Respondent's picketing and strike, in addition to the recognitional and bargaining objective, was to force the Employer to rehire the striking chief engineers as 8(b)(1)(B) representatives, replacing any 8(b)(1)(B) representatives chosen by the Employer to fill vacancies created by the strike. Given this reinstatement objective, the strike and picketing represented unlawful ''direct coercion'' of the Employer in its selection of representatives for the adjustment of grievances. *Marine Transport*, supra at 529.[2] Accordingly, I dissent from my colleagues' failure to find that the Respondent's strike and picketing were unlawful under Section 8(b)(1)(B).

[1] As stated above, the judge overlooked this testimony of the two union representatives and thus it goes without saying that he made no specific factfindings, including credibility resolutions, with respect to it. The judge's failure here is not critical to the evaluation of this evidence, however, in view of the inherent trustworthiness of admissions against interest, see, e.g., *Fed.R.Evid.* 801(d)(2), and the fact that they are uncontradicted and undisputed on this record.

[2] Because the Respondent's reinstatement objective is adequate to support a violation of Sec. 8(b)(1)(B), it is unnecessary to address the question of the lawfulness under Sec. 8(b)(1)(B) of the Respondent's recognitional and bargaining objective. See *Marine Transport*, supra, 545 fn. 33.

*A. Bradley Howell, Esq.*, for the General Counsel.

*Gerald B. Lackey, Esq. (Lackey, Nusbaum, Harris, Reny & Torzewski)*, of Toledo, Ohio, and *Joel C. Glanstein, Esq.*, of New York, New York, for the Respondent.

*William F. Kershner, Esq. (Pepper, Hamilton & Scheetz)*, of Berwyn, Pennsylvania, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

RUSSELL M. KING JR., Administrative Law Judge. This case was heard by me on June 29 and 30 in Alpena, Michigan, and on September 12 and 13 1989, in Detroit, Michigan. The charge was filed on November 10, 1988, by Inland Lakes Management, Inc. (the Company).[1] Based on the charge, a complaint was issued on March 16, 1989, by the Regional Director for Region 7 of the National Labor Relations Board (the Board), on behalf of the Board's General Counsel.[2]

The principal issue is whether District 2, Marine Engineers Beneficial Association—Associated Maritime Officers, AFL–CIO (the Union or MEBA), by its picketing seeking recognition and bargaining for the Company's marine engineers, and for reinstatement of striking engineers, violated Section 8(b)(1)(B) of the National Labor Relations Act (the Act).[3]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party, I make the following

### FINDINGS OF FACT[4]

#### I. JURISDICTION AND THE LABOR ORGANIZATION

The Company is a Michigan corporation engaged in the business of transporting bulk freight from and between var-

[1] All dates are in 1988 unless otherwise indicated.

[2] The term ''General Counsel,'' when used here, will normally refer to the attorney in the case acting on behalf of the General Counsel of the Board, through the Regional Director.

[3] The pertinent parts of the Act (29 U.S.C. § 151) read as follows:

> Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances . . . .

[4] The facts found here are based on the record as a whole and on my observation of the witnesses. The credibility resolutions here have been derived from a review of the *entire* testimonial record and exhibits with due regard for the logic of probability, the demeanor of the witnesses, and the teaching of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). As to those testifying in contradiction of the findings, their testimony has been discredited either as having been in conflict with the testimony of credible witnesses or because it was

ious ports on the Great Lakes, with its home base in Alpena, Michigan. During 1988 the Charging Party received goods and products valued in excess of $50,000 which it shipped to various locations inside and outside the State of Michigan, and received gross revenues for its services in excess of $1 million. The Company admits and I so find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

I also find, as admitted, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

## II. THE ALLEGED UNFAIR LABOR PRACTICES

### A. *The Basic Allegations*

The complaint alleges that beginning on September 10, the Union restrained and coerced the Company in its selection of its representatives for the purposes of collective bargaining or adjustment of grievances, in violation of Section 8(b)(1)(B) of the Act by establishing and maintaining a picket line at the Company's various facilities for the purpose of requiring the Company to recognize the Union as the collective-bargaining representative of its licensed engineers, and to obtain a collective-bargaining agreement on behalf of said engineers. The complaint further alleges that the Union violated Section 8(b)(1)(B) of the Act by threatening a licensed engineer of the Company with permanent loss of his pension benefits if he did not cease his employment with the Company, and by threatening another licensed engineer with unspecified detrimental action if he did not cease his employment with the Company.

The licensed engineers on each of the Company's four vessels consist of the chief engineer and the first, second, and third assistants. The parties stipulated that all of the licensed engineers are supervisors within the meaning of the Act, but disagreed as to whether any of the licensed engineers had the authority to adjust grievances. The Company and the General Counsel allege that all engineers had such authority, and the Union maintains that none of the licensed engineers had such authority.

### B. *Testimony and Evidence*

The Company has two vessels in storage and operates four ships on the Great Lakes carrying bulk cement from two plants to various locations in Michigan and other States. The vessels were originally owned by the Huron Cement Company and later were owned by National Gypsum Company, which sold them to LaFarge Cement Company. The present company took over the operation of these vessels from LaFarge in 1987 and services the LaFarge Company by carrying its bulk cement in the Great Lakes area. A number of personnel have been employed on these ships for more than 15 years.

When the Company began operations in 1987, it signed a contract with the Seamen's International Union (the SIU) for the Company's unlicensed crew members, and this relationship has been maintained throughout. SIU has contracts for most of the vessels operating on the Great Lakes through a group of operators known as GLAMO. The Company did not join GLAMO but adopted portions of the GLAMO-SIU contract, and negotiated some differences in the GLAMO contract with the SIU. There is agreement between the parties that department heads on the vessels consist of the chief engineer, the head steward, the head conveyor man and the first mate (all of whom are not represented by SIU). The contract between the Company and SIU contains the following grievance clause, among others: ''Step 1. The employee, together with the departmental Union delegate and/or Union official, shall attempt settlement [of the complaint] with the head of the department.'' In step 2, the employee reduces the grievance to writing and the employee and department head sign it and submit it to shoreside officials, after bringing it to the attention of the vessel's captain. Step 2 also provides that the department head ''must'' submit written comments regarding the grievance to the Company.

On March 30 Melvin Pelfrey, the executive vice president of the Union, wrote a letter to Company's president, James Gaskell, stating that the Union represented the licensed engineers of the Company and was ready to prove its majority status by submitting authorization cards to a mutually selected impartial person. On April 5, Gaskell replied that the employees sought were supervisors who were not covered by the National Labor Relations Act and he doubted that they constituted a unit appropriate for collective bargaining, or that the Union represented a majority of them. Gaskell thus refused to recognize the Union, or negotiate with it for any of its supervisors. On April 11 Pelfrey sent a telegram to Gaskell stating that if the Company doubted the Union represented a majority it would be willing to have an election conducted by the American Arbitration Association or any other independent organization to demonstrate its majority. On April 12 Gaskell replied by telegram that the unit sought was supervisory and that any picketing to force the Company to recognize the Union would be viewed as unlawful under the National Labor Relations Act. There was a further reply by Pelfrey stating the Union represented a majority of the licensed engineers and wished to prove it by a secret ballot or by authorization cards. Nothing further occurred until September 10 when the Union began picketing at Alpena and a number of the other ports where the Company's vessels called. The picket signs recited that the Union was on strike against the Company, named the Company's four ships, and recited that the Union had no dispute with any other employer.

The one chief engineer who did not leave his vessel to join the picket line testified that at one port, and near the Union's picket signs, there were two other signs which urged the other licensed personnel to aid the strike. Third assistant engineer, John Leindecker, testified that when he and his wife left the ship in Alpena, they were followed by a truck and he was accosted by a former third assistant engineer, David Jarvis, and was told that he would be followed as long as he stayed in port and continued to work for the Company. Jarvis denied such activity and said he had left Alpena the previous day and reported aboard a ship in Buffalo, New York, and produced documents to corroborate his testimony. The Company's brief agrees that due to the documents submitted, the identification of Jarvis by Leindecker must have been inaccurate.

Earl Allison was on retirement under the union pension plan and without notifying the Union that he wished to return

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in and of itself incredible and unworthy of belief. *All* testimony and evidence, regardless of whether or not mentioned or alluded to herein, has been reviewed and weighed in light of the *entire* record.

to active employment, took the Company's offer and reported for work as a first assistant engineer in September. On October 4 Pelfrey wrote Allison that he had been advised Allison was working as an engineer while still on the Union's rolls as a pensioner and had neither sought nor received permission to return to active employment as a licensed marine engineer. Pelfrey insisted that Allison terminate such employment or Pelfrey would take every step available to seek his permanent removal from the pension rolls. Allison continued to work for the Company and during one period of 2 to 3 weeks in latter November, he served as a chief engineer before ceasing his employment at the end of December. In its brief Respondent states that Pelfrey was under the impression that he had the authority to attempt to accomplish what he stated in the letter, but in fact at the time Pelfrey did not have such authority although an amendment did provide that pensioners who take maritime employment and again retire from such employment, lose their pensions during such employment.

At the time of the hearing, picketing was still being carried on whenever the Company ships came into port, either by small boat picketing or picketing at the docks.

Company President Gaskell testified that he and his staff told the chief engineers and assistants they could resolve grievances, but Gaskell did not indicate when, where or how such instructions were given, conceding that no written instructions were given. Three chiefs, including two who were on strike, testified that they had authority to process and adjust grievances, but they had never been notified by the Company, in writing, that they were grievance adjustors. The two chiefs who were on strike denied that any of the assistant engineers had authority to adjust grievances, or that they had ever delegated such authority to any of the assistant engineers.

Leindecker, a third assistant engineer, testified that they were to keep grievances on the lowest level possible and felt that he had some authority while in port to do so in the absence of the chief engineer. The chief engineers testified that while they were in port their licenses remained hung in the ship, which indicated that they still had full responsibility for anything that occurred aboard that ship, and that no grievances would be adjusted by anybody below their level. They added that the only action that might be taken by an assistant engineer was to listen to complaints from crew members where someone had made a mathematical error in their pay, or some similar grumbling which did not arise to the level of a grievance. Third assistant engineer David Jarvis testified that he was never told by either Gaskell or Vice President Martinson or any other management agent that he had any authority concerning grievances or any grievance responsibility. He further testified that there was no written company policy on grievances.

James Moore, a chief engineer since 1987, testified that he had received nothing from the Company regarding his grievance authority either verbally or written, but that he was responsible for the engineering operations even while in home port and does have the authority to adjust grievances and gave instances where he had done so. His testimony was corroborated by chief engineer Sam Beland who had been a chief engineer for 16 or 17 years. Beland added that he had been told by the Company that as the department head he had the authority to adjust grievances and did so. He specifically denied ever telling Leindecker, who was a third assistant under him, that he had any authority to adjust grievances, not even in short absences. Beland stated that his authority to adjust grievances was the same with this company as it had been for other companies he had worked for, adding that the department head had that authority. Both Moore and Beland were strikers.

### C. *Evaluation of Law and Evidence and Initial Conclusions*

The General Counsel and the Company argue that all licensed engineers are not only supervisory employees but also have sufficient 8(b)(1)(B) responsibilities to be considered grievance adjusters. However, in my opinion, the testimony and evidence in the case does not support this position. It is clear, under the SIU contract and under the credible testimony of Beland and Moore, that chief engineers were the first-line grievance adjusters in their departments. The oral directions to which Beland testified indicate that the Company wanted all matters handled as expeditiously as possible without grievances going to the shoreside for settlement. The contract's grievance procedure provides that matters could be handled orally with the department head, and if not settled with the department head, there would follow a written report by the chief engineer and a written grievance drawn up by the department delegate and the grievant which was then submitted to shoreside union delegates for further action. Before the grievance left the ship however, the grievance would go to the captain for his approval or rejection or for him to try to settle the matter. The Union took the position that no true grievance existed until it was past the department head stage when a written grievance came into existence.

With the Supreme Court's rejection of the Board's reservoir theory as detailed by Justice Brennan in *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, 481 U.S. 573 (1987) (*Royal Electric*), and as the Board set forth in *Carpenters District Council of Dayton (Concourse Construction Co.)*, 296 NLRB 492 (1989), it is clear that to find an 8(b)(1)(B) violation the supervisor must have actual grievance adjustment or collective-bargaining responsibilities, not merely minor or potential capabilities. In this case the clear and convincing evidence which was given by the chief engineers in consonance with the SIU contract and area practice, establishes that the chief engineers are the first line grievance adjusters and 8(b)(1)(B) representatives, and I so find. I do not find that any of the assistant engineers are grievance adjusters and therefore conclude that they do not have 8(b)(1)(B) responsibilities. Since none of the assistant engineers have 8(b)(1)(B) responsibilities, neither the threat made to Allison concerning his pension, nor the asserted threat by Jarvis (which I do not find occurred as alleged in the complaint) were made to individuals with 8(b)(1)(B) responsibility, and therefore, neither could violate Section 8(b)(1)(B). I will thus recommend dismissal of these two allegations in the complaint.

In addition to the allegation that the picketing was for the purpose of securing recognition and bargaining for licensed engineers, in violation of Section 8(b)(1)(B) of the Act, the General Counsel claims that the picketing also seeks the reinstatement of the striking engineers, both chiefs and assistants, and that picketing for such a purpose also violates Section 8(b)(1)(B) of the Act. Having found above that the assistant

engineers are not 8(b)(1)(B) representatives, picketing for recognition and a contract for them or attempting to have them reinstated could not violate Section 8(b)(1)(B) of the Act. Thus, pared down, the question to be answered is whether picketing to seek recognition and bargaining for the chief engineers, and for the General Counsel's asserted reason of obtaining their reinstatement when the strike ended, violates Section 8(b)(1)(B) of the Act.

The General Counsel and the Company argue that picketing for recognition and bargaining is equivalent to seeking to compel the employment of union members as the Company's 8(b)(1)(B) representatives, and to require the Company to enter into a contract which would limit the Company in its ability to freely select its grievance representatives. Further they argue that the picketing which caused the engineers to strike, and compelled the Company to hire replacements, also has as its purpose the reinstatement of those who supported the strike, which would be forcing the Company to accept 8(b)(1)(B) representatives not of its own choosing. Going further, General Counsel argues that the contract which the Union would seek is the contract applicable on other Great Lakes vessels which contains a hiring hall provision, and which in turn would inhibit the Company's ability to hire representatives of its own choosing to represent it as grievance adjusters. To support his position the General Counsel cites *Sheet Metal Workers Local 17 (George Koch Sons)*, 199 NLRB 166 (1972), and *Royal Electric*, supra, for the proposition that direct coercion of an employer in the selection of its collective-bargaining or grievance representatives is a violation of Section 8(b)(1)(B). There is no question about this proposition. However, the General Counsel asserts that the direct coercion in this case is the picketing of the Company by the Union, and there is a question as to this proposition.

In *Hanna Mining Co. v. District 2 Marine Engineers Beneficial Assn.*, 382 U.S. 181 (1965), the Supreme Court held there was no Federal preemption involved in the primary picketing for a unit of supervisors, after finding no violation of Section 8(b)(4)(B) of the Act. In *Masters, Mates & Pilots v. NLRB*, 486 F.2d 1272 (1973) (rehearing and cert. denied) (*MM&P* case), the Court of Appeals for the District of Columbia, in finding a violation, distinguished *Hanna Mining* in fn. 3, as follows:

> Nothing to the contrary is implied in *Hanna Mining v. District 2, Marine Engineers Beneficial Assn.*, 382 U.S. 181, 86 S. Ct. 327, 15 L.Ed.2d 254 (1965). There MEBA picketed a vessel, claiming that the employer unfairly refused to recognize the union as the bargaining representative of the vessel's engineers. The Supreme Court held that state court jurisdiction to enjoin the picketing was not preempted by federal law as the conduct was not arguably prohibited by Section 8(b). While this may constitute an implicit holding that the picketing there did not violate subsection 8(b)(1)(B), an obvious difference distinguishes the *Hanna* picketing from that which took place in the instant case. In *Hanna* the picketing was not directed at having certain engineers fired and replaced, as was the case here, but rather at having MEBA recognized as the bargaining representative of then employed engineers, a majority of whom allegedly desired MEBA as their representative.

In the *MM&P* case, and in other similar cases where violations were found, there was the element of one labor organization trying to replace another which had been recognized by the employer. In each, the union sought a particular contract and employment of particular individuals with 8(b)(1)(B) authority. In the instant case, there was a request for recognition and bargaining in March and April for individuals then employed by the Company. The picketing did not start until nearly 6 months later, and thereafter three of the four chief engineers and some of the assistant engineers honored the picket line and left the ships.

The General Counsel asserts that the contract which the Union desired would mandate that the Company secure new hires through the union hiring hall, which would inhibit the Company in its choice of 8(b)(1)(B) representatives. The only 8(b)(1)(B) representatives involved in this case are the four chief engineers for the Company's four vessels. The chief engineers hold licenses from the Coast Guard certifying them for such positions. From the testimony there appears to be little movement in those positions. One of the Company's chief engineers had held that position for a great many years with the Company and its predecessors, and there appears to be advancement of those within the Company who hold proper credentials. It also is not clear when and under what circumstances it would be necessary to use a hiring hall if the Company did agree to recognize the Union, even if the Company agreed to the Great Lakes contract without seeking modifications (which were successfully sought in the SIU contract).

The Supreme Court in *Royal Electric*, supra, citing *Florida Power & Light Co. v. Electrical Workers*, 417 U.S. 790 (1974), reiterated that Congress did not design Section 8(b)(1)(B) of the Act to guarantee employees the undivided loyalty of 8(b)(1)(B) representatives, noting that an employer has the option to demand, under threat of discharge, that supervisors neither participate in or retain membership in a union or it can permit them to join or retain such membership and resolve ''such conflicts as arise through the traditional procedures of collective bargaining.''

The General Counsel asserts that since the Union desires that those engineers (including the chiefs) who honored the picket line to be reinstated following the cessation of the strike, such a purpose for the strike violates Section 8(b)(1)(B) since the Union would be directing who the 8(b)(1)(B) representatives for the Company would be. This position rides on a number of suppositions which I cannot make. The first is that the Company would not want to reinstate the engineers who left the vessels after picketing began. The chief engineers had been with the Company or its predecessors for varying lengths of time, and I cannot presume the Company would not want them back on its vessels as its 8(b)(1)(B) representatives. The original purpose of the picketing was for recognition and bargaining. The fact that the Company replaced those who honored the picket line did not alter the purpose of the picketing. Any reinstatement of the strikers is problematical in that the strike would have to end, the parties would have to engage in negotiations following recognition, there would have to be an agreement to rein-

state, and the three chiefs would have to desire reinstatement with the Company.

In contrast to the other *MM&P* case and other similar cases, in this case there was no request, either oral or in writing, indicating that the Union insisted the Company adopt all the terms of the contract with other Great Lakes companies. None of the picket signs, or other demands, asked more than recognition and bargaining. One picket sign asked others to honor its picket line. There was no sign or demand concerning area standards. There is no demand or picket sign requesting that all hiring be done through the union hiring hall. There was no demand or picket sign stating that reinstatement of strikers was a condition of ceasing the strike. There was no element of raiding, only an effort to be recognized as the bargaining agent of those already employed by the Company.

In essence, the Company and the General Counsel are seeking to forecast, as fact, what they think the Union would seek if it and the Company and the Union ever began negotiations. There is no testimony or evidence in the case to establish what, if anything, the Union seeks beyond recognition and bargaining.

In my opinion, the teaching of *Royal Electric* and the *MM&P* case dictate that no violation be found in this case. As stated by Justice Brennan in the *Royal Electric* case, the violation here can only be found on a ''chain of suppositions,'' which lack supporting evidence. I conclude and find that the picketing in this case was for recognition and bargaining only, and under the circumstances of this case does not violate Section 8(b)(1)(B) of the Act, and thus I shall recommend that the complaint be dismissed.

On these findings of fact and initial conclusions, and on the entire record, I make the following

## CONCLUSIONS OF LAW

1. The Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Union has not violated Section 8(b)(1)(A) of the Act as alleged in paragraphs 9 and 12 of the complaint.
4. The Union has not otherwise violated the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

## ORDER

The complaint be and the same is dismissed.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.